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I. F. Stone's Weekly

VOL. VI, NO. 4 JANUARY 27, 1958 WASHINGTON, D. C. 15 CENTS

Has the House Un-American Committee Been Abolished?

A week after the Watkins decision last June, the U. S. Supreme Court vacated the conviction of Lloyd Barenblatt for contempt of the House Un-American Activities Committee. The conviction was remanded to the Court of Appeals for the District of Columbia Circuit for reconsideration in the light of the Watkins ruling. The Court of Appeals, after an unusually long delay, has now reaffirmed the conviction but on the basis of a narrowly split vote, 5-4. Since this is the first Court of Appeals decision interpreting the meaning of the Watkins case, it has stirred a seismic tremble left of center. Can it be that the House Committee on Un-American Activities is still free to operate after the Watkins decision, and specifically to carry on that witch hunt in the field of education which Barenblatt, a former instructor at Vassar, defied on First Amendment grounds?

This breaks down into several questions. The first is whether the House Committee's enabling resolution, even if still valid, confers upon it any authority to investigate the field of education. The four dissenting judges, reading the Watkins ruling in the light of the companion decision the Supreme Court handed down the same day last June in the Sweezy case, assert that the House Committee has no power to investigate education. Both the Chief Justice, for the Court, and Mr. Justice Frankfurter concurring for himself and Mr. Justice Harlan, stressed (as the latter opinion said) "the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university." This would certainly seem to shut the door on any governmental witch hunt in the schools even if the enabling resolution of the House Committee did specifically include education, which it doesn't.

The Broader Question

The second and broader question raised by the new Barenblatt decision about the meaning of the Watkins ruling is whether Congress—in the light of what the Supreme Court said last June—can carry on *any* kind of a witch hunt. Two dissenters on the Court of Appeals, Chief Judge Edgerton and Judge Bazelon, contend that the House Committee has lost its sting altogether. The two other dissenters, Judges Fahy and Washington, say that the lack of authority in the field of education is so clear that "it is unnecessary here to go into the question whether *Watkins* holds the Committee to be without authority to compel testimony on any subject."

The majority on the Court of Appeals says otherwise. It holds that despite *Watkins,* the House Committee can go on punishing witnesses for contempt so long as they are "made fully aware of the subject under inquiry" and are "in a position to judge the pertinency of the questions relating to that subject." But this, in our opinion, misreads the Supreme Court ruling.

Yes, Virginia, There's Still A Red (Red Men, That Is) Menace

The Weekly has decided to establish an annual Bakunin award, commemorating one of the livelier traditions of the enlightened Nineteenth century, and to confer it this year for distinguished public service on the Indians of Robeson County, North Carolina, who broke up a Klan segregation rally with buckshot and sent the Klan leader complaining to the police that he wanted the same protection—as he phrased it—"given Negroes at Little Rock." We regret only that the Indians, obviously corrupted by white civilization, took nightshirts but no scalps.

The majority on the Supreme Court, the concurring opinion of Frankfurter and Harlan, and the dissent of Mr. Justice Tom Clark, all agree that the Watkins conviction was reversed on two grounds, not one. One ground was that the Committee had failed to make clear to Watkins just what was pertinent to any legislative purpose in inquiring about the membership of people he had known years before in the Communist party. The other reason was that where a legislative inquiry threatens to impinge on First amendment freedoms, it must be scrutinized with the utmost care by the Courts. But in the case of the House Committee, its charter was so "excessively broad," its standard—"un-American"—so vague, that the Courts could not possibly determine whether it was proper under the First Amendment. "It is impossible in such a situation," the Chief Justice said, "to ascertain whether any legislative purpose justifies the disclosures sought." The resolution falls not only because the witness cannot judge pertinency and constitutionality within its nebulous confines but because the Courts cannot either!

A Yes and No Answer

Will it then turn out that the Supreme Court decision in *Watkins* has put the House Committee out of business? The answer is both Yes and No. This is where confusion arises. The Court cannot void the action of Congress in establishing a Committee. That is the business of Congress. All the Court can do is to refuse to allow witnesses who defy that Committee to be punished for contempt. Trial is a judicial function and this is the Court's business. The House Committee can go on operating so long as it confines itself (as it has in recent weeks) to hearing assorted experts and screwballs who appear voluntarily. But it can no longer subpoena and punish an unwilling witness. In that sense it is out of business.

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The Witch Hunters Can Only Stay In Business by "Abolishing" The Committee

(*Continued from Page One*)

A Trap for the Unwary

Here lies a trap for those fighting to abolish the Committee. There are shrewd lawyers like its chairman, Congressman Walter, who are beginning privately to take up the abolition talk in order to establish a new committee which can exert compulsory process because it will have a new name and a new charter and it may take some time before the Courts catch up. Before the *Watkins* ruling, there might have seemed some lesser evil logic in "abolishing" the House Committee in favor of a new group, say a new subcommittee of House Judiciary, or a new joint committee. But today that represents the one way the witch hunters can stay in business a little longer and find a respectable mask. Walter is already saying in private that he himself voted against establishing the original committee two decades ago and is in favor of its abolition. But he wants a new subcommittee in House Judiciary which he can dominate.

The coming Barenblatt decision will further undercut the House Committee's authority and prestige, as the ultimate disposal of the companion Harry Sacher and Abe Flaxer contempts of the Senate Internal Security Committee will irreparably damage that other Senatorial arm of the witch hunt. The fight for abolition of the witch hunt must not be diverted by booby-trap compromise proposals, especially from weak-kneed liberal members of Congress who are afraid of a real fight with Walter. The campaign for abolition must set its goal that of public education in the fact that under the First Amendment Congress has no right to abridge freedoms of speech, press and assembly by setting up pillories for those with non-conformist views.

Full Text Chicago Area Appeal for Abolition of the Un-American Committee

Because it has been given scant attention in the press and is available nowhere else; because it is a model that merits imitation (Why do New York, Philadelphia and Los Angeles lag behind Chicago?), and because of its distinguished signers, we give here the text of the petition sent by 61 Chicago residents to the 16 Chicago area Congressmen asking the abolition of the House Un-American Activities Committee:

"The Supreme Court's decision in the Watkins case makes imperative a prompt re-examination of the practices and purposes of the Committee on Un-American Activities of the House of Representatives. It is particularly important that this re-examination be made by members of the House of Representatives who, as the Court pointed out, collectively have the primary responsibility for the control and guidance of House committees.

"The Court now fully recognizes the serious threat to precious individual freedoms which the activities of the House Committee on Un-American Activities may entail. In the words of Chief Justice Warren:

A Pillory for Non-Conformists

" 'Abuses of the investigative process may imperceptibly lead to abridgment of protected freedoms. The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous . . . Nor does the witness alone suffer . . . Those who are identified by witnesses and thereby placed in the same glare of publicity are equally subject to public stigma, scorn and obloquy. Beyond that, there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time. . . .'

"The Court underscores that Congressional investigations must relate directly to a genuine legislative function and explicitly states that it is not the function of Congress to try individuals, to enforce the laws, 'to expose for the sake of exposure'. Such investigations can lead to 'ruthless exposure of private lives in order to gather data that is neither desired by Congress nor useful to it.'

"In finding that the House of Representatives failed to give appropriate guidance to the Committee on Un-American Activities, the Court says 'it would be difficult to imagine a less explicit authorizing resolution . . . Who can define the meaning of "un-American" . . . Combining the language of the resolution with the construction it has been given, it is evident that the preliminary control of the Committee exercised by the House of Representatives is slight or non-existent. No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make. . . .'

"The decision of the Court has crystallized the considerable criticism which many segments of the American community have voiced against this Committee's indiscriminate investigations.

"We, therefore, now call upon members of the House of Representatives to recognize that its Committee on Un-American Activities operates under an indefensibly broad charter; that it too often has served no valid legislative purpose; that its activities imperil American values; that the result of its methods lessens the dignity and high office of our elected representatives.

"We urge that the standing committee on Un-American Activities of the House of Representatives be abolished."

The Signers

Dr. John A. Lapp, director, Roosevelt University, National Committee, American Civil Liberties Union; John B. Thompson, Dean, Rockefeller Chapel, Univ. of Chicago; A. C. McGiffert, Jr., President, Chicago Theological Seminary; David Riesman, Univ. of Chicago; and Nobel Prize Winner Harold C. Urey.

Professors Walter Johnson, Harry Kalven, Jr., Jerome Kerwin, Morton Grodzins, Malcolm Sharp, Kermit Eby, Maynard Kreuger, and C. Herman Pritchett, Univ. of Chicago; Professors Curtis Macdougall, Ray A. Billington, Walter B. Rideout, Rockwell C. Smith, John E. Coons, Stephen Love, Ernest J. Wrage, Carl de Schweinitz, Jr., Jacob Scher, Robert H. Strotz, Jules A. Marcus, Myer Dwass, Walter B. Scott, Lawrence Towner, Wm. M. Trumbull, and Robert Eisner, of Northwestern Univ.; Professors Frank Untermyer and George Watson of Roosevelt Univ.; Prof. Chalmer E. Faw of Bethany Seminary.

Wm. C. Davidon, Chairman, Atomic Scientists of Chicago; Miss Jessie F. Binford, Hull House; Rabbi George G. Fox, South Shore Temple; Rev. James Royston, Gospel Temple; Wallace Heistad, head of Olivet Institute; George Miles Gibson, McCormick Theological Seminary; Rabbi Eric Friedland, Beth Am Peoples Synagogue; Rabbi Jacob J. Weinstein, KAM Temple; Rev. David H. Cole, First Universalist Church; Rev. Alva Tompkins, Olivet Presbyterian.

Lawyers Earl Dickerson, Francis Heisler, Eugene Cotton, Richard Watt, Samuel Holland, Hans Lehmann, Wm. Rodriguez, Al M. Curtis, Leonard L. Leon and Elmer R. Segal.

Trade Unionists: Sidney Lens, Building Service Employes; Henry B. Anderson, Joint Board Retail, Wholesale; Willoughby Abner, UAW; Charles Hayes, Packinghouse; Tom Slater, Carpenters.

Lafayette Marsh, Friends Service Committee; Russell Babcock, Citizens Schools Committee; Rabbi S. Burr Yampol, Sovereign Kosher Nursing Home; Mrs. Wanda Babcock.

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Alabama Draws A Cute But Spurious Analogy Between NAACP and Klan

It has been said that hard cases make bad law. There never was a harder case than the NAACP's suit against the State of Alabama. Practically the situation is quite simple: the courts of Alabama are playing their part in the general conspiracy by white Southerners to nullify by every means at their command the Supreme Court's school integration ruling. But as part of their contribution to organized sectional white supremacist lawlessness, the Alabama courts have tied the case up in almost inextricable legalistic knots, ranging from the type of appeal required by Alabama procedure in contempt cases to Alabama's right to "unmask" the NAACP "just like the Klan."

This drawing of a parallel between the NAACP and the Klan is as spurious as it is cute, and we are sorry to see that the brief amicus filed by 14 sympathetic organizations (including the ACLU and the American Jewish Congress) dignified it by arguing *in vacuo* a right to anonymity in politics. The NAACP case can clearly be distinguished from the old Klan cases without arguing a general principle of dubious value. Whether an organization has a right to operate in secrecy is a question to be determined by circumstances and not by abstractions.

The Cases Alabama Relies Upon

This becomes clear if one examines the two leading cases relied upon by Alabama in its claim to the membership lists of the NAACP. One is the Zimmerman case decided by the U. S. Supreme Court in 1928. The Klan claimed that it was discriminated against by the State of New York because labor unions, the Masons, the Knights of Columbus and other organizations were allowed to operate on the basis of a secret oath of membership but not the Klan. A Supreme Court majority which included Holmes and Brandeis (278 U. S. 63) ruled that the State of New York had a right to put the Klan in a special class because legislative inquiry had shown that it was using secrecy as "a cloak for acts and conduct inimical to personal rights and public welfare."

The other case relied upon by Alabama is a decision of its own State Supreme Court in 1949 (265 Ala. 355). This upheld the conviction for contempt of a Klan official who had refused to turn over his membership list. But this order was issued by a judge in the course of a grand jury investigation into "acts of terrorism, flogging, etc." committed by Klansmen in that particular county of Alabama.

Victories of the Week

It is a pleasure to record another dismissal of a Smith Act prosecution. The Court of Appeals for the Ninth Circuit has freed seven Hawaii and four Seattle defendants originally convicted in 1953. The Circuit Court Judge, Richard M. Chambers, complained (over the protest of his two concurring colleagues) that the Supreme Court had made "a virtual shambles" of the Smith Act. The Act, though still theoretically unconstitutional, has been rendered practically unworkable by Mr. Justice Harlan's decision in the California cases.

It is also a pleasure to note that Senator Eastland, on the eve of argument in the Court of Appeals here in Washington last week, threw in the sponge and accepted defeat in William H. Hinton's suit to recover books and papers seized from him by the Senate Internal Security Committee when he returned from China almost five years ago.

There has been no legislative finding in Alabama that the NAACP uses privacy of membership for violation of the law, nor has the NAACP been summoned in a grand jury inquiry into any outbreak of lawlessness. On the contrary the demand for its membership list is an incident in a general campaign by Alabama to frighten its Negro citizens away from trying to enjoy or enforce rights the Supreme Court says they have. The NAACP is trying to uphold the law, not to undermine it, and its right to privacy is best bottomed on the terroristic circumstances existing in Alabama rather than on any general "right to anonymity." It all depends on what the anonymity is used for. It would be folly to argue that an organization like the Klan, engaging in masked terrorism, has a right to anonymity.

The NAACP has been operating in Alabama since 1918. Now it has suddenly been fined $100,000 and ousted from the State on the ground that it had failed to register as a foreign corporation. The same racist judge who imposed the penalty also issued an injunction forbidding it to register! But the state law governing foreign corporations does not require them when they register to make public their stockholders or members. The whole affair is a judicial frameup and it is a pity to have to argue its rationalizations seriously.

Will Passport Cases See A Surprise Like That in the Soldier Loyalty Argument?

In a well-informed source unconnected with the pending passport appeals but in close contact with the Department of Justice, the Weekly is informed that the Solicitor General's office is as dubious about the legality of the State Department's policy on passports as it is about Defense Department policy of giving less than honorable discharges to soldiers suspected of subversive connections in civilian life.

The dramatic high-point in the argument before the Supreme Court last week of two soldier appeals came when the Justice Department attorney assigned to argue the case admitted the Department did not believe Secretary of the Army Brucker had any lawful authority to base less-than-honorable discharges on pre-induction activities. But the government attorney contended the courts had no authority to correct this wrong.

Shall the Army Censor Politics?

This view is unlikely to be upheld by the Supreme Court since it would in effect give the Army wide powers of supervision over civilian political life. Every able-bodied man liable to military or reserve duty would be on notice that he risked less than honorable discharge if he engaged in activities the Army regarded as subversive.

The vagaries to be expected from allowing such Army censorship over political activities are illustrated by the facts in the two appeals. David Shapiro, arguing the John Henry Harmon III appeal on behalf of the Workers Defense League, pointed out that one of the allegations on which his client was denied an honorable discharge was the fact of pre-induction employment at Camp Lakeland. Apparently Camp Lakeland was regarded as "subversive" because it is interracial.

Victor Rabinowitz, arguing the Howard Abramowitz appeal for the Emergency Civil Liberties Committee, pointed out that his client had originally been given an honorable discharge after two years service in the Army. Later, in a review precipitated by fear of the then current McCarthy investigation, the Army gave him an undesirable discharge from the enlisted reserve on the ground of pre-induction "subversive" connections. The regulations now before the Supreme Court represent leftovers from the McCarthy period. Until the famous Peress case, the Army always based the type of discharge given a man on his conduct in the Army.

The admissions by the Department of Justice may have sealed the fate of these McCarthy era regulations in the Supreme Court. Will there be similar admissions in March when the Court passes on the State Department's right (1) to demand a non-Communist oath for a passport and (2) to deny passports on secret evidence?

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Negotiations Are Difficult Enough Without Inventing New Falsehoods

The Myth That the Russians Broke A Promise to Reunite Germany

A new myth is in the making. It is that the Soviet Union at the Geneva conference promised German reunification on the basis of free elections. This myth has been launched in recent weeks by Secretary of State Dulles and embodied in scripts he prepared for the President. It is used to argue the futility of negotiations.

The historian, Frederick L. Schuman, challenged this new myth in a letter which the *New York Times* published last Tuesday, Jan. 21. "If self-righteousness is to be deemed, Dulles-wise, a proper basis for foreign policy," Mr. Schuman wrote, "the more obvious mendacities should be avoided."

The *New York Times* appended to the letter a disingenuously worded editor's note which skillfully evaded the point and was designed to give the unwary reader the impression that Mr. Dulles is telling the truth.

They Ought to Look in Their Own Files

It is instructive to compare this editor's note with what the *Times* had to say the day after the Geneva conference ended. In an editorial, it said (July 24, 1955) that on all the main issues, including Germany, the result "leaves us about where we were before." From Geneva, Mr. James Reston reported, "There is no evidence that Germany will be united . . . The Soviet Union is obviously not going to allow the unification of Germany within the context of the North Atlantic Alliance."

The headline over the Times' story from Bonn that day was, "Bonn Sees Geneva As Setback for German Reunification." Nowhere in the *New York Times,* or indeed in any other paper, were the ambiguous words of the final Geneva communique regarded as a Russian promise.

The real story of that final communique was disclosed to Elie Abel of the *New York Times* staff by a "diplomatic informant" during the Foreign Ministers Conference which followed. The story may be found in a Geneva dispatch which the paper printed on October 31, 1955.

Mr. Abel said that when the heads of State in the final hours of the summit conference were unable to agree and found themselves "confronted with the prospect of returning to their capitals empty-handed" they hit upon a face-saving compromise. The West insisted German reunification must be the first business of the Foreign Ministers; Moscow insisted it must be European security.

They "decided to compromise their differences by an ingenious device," Mr. Abel reported. "Lumping the two disputed questions into one, they deliberately gave the directive an ambiguous twist."

The Foreign Ministers were directed to take account of "the close link between the reunification of Germany and the problems of European security" while the heads of State agreed that "the reunification of Germany by means of free elections shall be carried out in conformity with the national interests of the German people and . . . European security."

For the Russians "the interests of European security" was shorthand for their demand that Germany be demilitarized and neutralized, while Mr. Dulles at the Foreign Ministers conference would offer the Russians a security pact but only if and when a reunited armed Germany joined NATO. On this the talks broke down.

It is only now, two years later, when the facts have been forgotten, that Mr. Dulles dares claim that Moscow at Geneva made a promise simply to allow German reunification on the basis of free elections *without other conditions.* Nevertheless the truth may never catch up with this new lie that the Russians "broke their promise" on Germany at Geneva.

The 5th Birthday Dinner

The 5th Birthday Dinner was a rousing success; 320 diners were accommodated; as many more had their checks returned or were turned away. To them, our deepest regrets. The dinner had features which we modestly believe unprecedented. There were no set speeches and there was no appeal for funds. Dr. Edward U. Condon, Owen Lattimore, Albert Deutsch, Earl Browder, Olive Van Horne, Maxwell S. Stewart, Leonard Boudin and Clark Foreman were among the guests who spoke informally, while IFS was his own master of ceremonies and thanks all who participated for a memorable evening.

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NEWSPAPER

Entered as Second Class Mail Matter Washington, D. C. Post Office

I. F. Stone's Weekly. Entered as Second Class Matter at Washington, D. C., under the Act of March 3, 1879. Post-dated Mondays but published every Thursday except the last two Thursdays of August and December at 5618 Nebraska Ave., N.W., Washington 15, D. C.
An independent weekly published and edited by I. F. Stone; Circulation Manager, Esther M. Stone. Subscription: $5 in the U. S.: $6 in Canada; $10 elsewhere. Air Mail rates: $15 to Europe; $20 to Israel, Asia and Africa.

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